STATE OF MINNESOTA
IN COURT OF APPEALS
A13-2077

In re the Marriage of:
Shandin Cowle Moyne, petitioner,
Respondent,

vs.

Fabrice Jacques-Pierre Moyne,
Appellant.

Filed May 12, 2014
Affirmed
Crippen, Judge[*]

Dakota County District Court
File No. 19AV-FA-11-3084

Allison Maxim, Maxim Law, PLLC, St. Paul, Minnesota (for respondent)

Gerald O. Williams, Williams Divorce & Family Law, PA, Woodbury, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Ross, Judge; and Crippen, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

CRIPPEN, Judge

Appellant father disputes findings of fact by the district court that supported its conclusions of law on jurisdiction over proceedings on marital dissolution, child custody, and support. He also challenges the district court's ultimate finding that awarding mother sole legal and physical custody is in the best interests of the children. Because the district court's findings are not clearly erroneous, we affirm.

FACTS

Appellant Fabrice Jacques-Pierre Moyne (father) and Shandin Cowle Moyne (mother) were married on December 26, 2003, in Minnesota. The parties lived in Eagan, Minnesota, until Father, a French citizen, relocated to France in October 2010. The parties have two minor children, who have been in France with father since October 2011.

Mother filed a dissolution action in Minnesota on September 29, 2011, while the children were living with her, and father was personally served on October 4, 2011. Father filed a dissolution action in France during December 2011. Mother filed an ex parte motion for custody of the children in the Minnesota district court on December 20, 2011. Father moved to dismiss, arguing that the district court lacked subject-matter jurisdiction. After an evidentiary hearing that father participated in via Skype, the district court found that it had jurisdiction over the dissolution, custody, and support issues and ordered mother and father to share temporary joint legal and physical custody.

On December 5, 2012, the French family court issued an order enforcing Minnesota's jurisdiction over the case. Father appealed to the French appellate court, which reversed the French order enforcing jurisdiction in Minnesota. Mother appealed to the highest court in France and the record does not state when the decision is anticipated.

The Minnesota district court ordered father to return the children to Minnesota no later than July 9, 2012. When father did not return the children to Minnesota in July 2012, mother filed a motion requesting modification of child custody and finding father in contempt. The district court held that father was in constructive civil contempt and the court granted mother authority to remove the children from France. The district court declared the parties divorced in an order on April 17, 2013, and reserved the disputed issues for the dissolution trial. After trial on July 30, 2013, the district court awarded sole legal and physical custody of the children to mother, awarded mother spousal maintenance, and ordered father to pay child support to mother. Father appeals.

D E C I S I O N

Questions of subject-matter jurisdiction are reviewed de novo. *Johnson v. Murray*, 648 N.W.2d 664, 670 (Minn. 2002). A judgment is void if subject-matter jurisdiction is lacking. *Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 260 (Minn. App. 1999), *aff'd*, 612 N.W.2d 862 (Minn. 2000). Jurisdiction for dissolution, custody, and support each consider the time period from 180 days or six months prior to the commencement of the action, here upon the filing of the dissolution petition on April 2, 2011, to September 29, 2011 (counting 180 days); or March 29, 2011, to September 29, 2011 (counting six months). *See* Minn. Stat. § 518D.102(f) (2012) (defining

commencement as the filing of the first pleading in a proceeding). Findings of fact must be upheld unless they are clearly erroneous. Minn. R. Civ. P. 52.01; *see Goldman v. Greenwood*, 748 N.W.2d 279, 284 (Minn. 2008).

1.

Father argues the district court lacked marriage-dissolution jurisdiction. A marriage dissolution shall not be granted unless "(1) one of the parties has resided in this state . . . for not less than 180 days immediately preceding the commencement of the proceeding; or (2) one of the parties has been a domiciliary of this state for not less than 180 days immediately preceding commencement of the proceeding." Minn. Stat. § 518.07 (2012). For purposes of section 518.07, residence means "the place where a party has established a permanent home from which the party has no present intention of moving." Minn. Stat. § 518.003, subd. 9 (2012). But residence does not require that a party be physically present for the entire 180-day period. *See Jones v. Jones*, 402 N.W.2d 146, 148-49 (Minn. App. 1987). In *Jones*, this court interpreted section 518.07 to require a distinction between domicile and residency because the terms are listed separately in the statute as bases for jurisdiction. *Id.* at 149.

"Domicile is the union of residence and intention, and residence without intention, or intention without residence, is of no avail." *Davidner v. Davidner*, 304 Minn. 491, 493, 232 N.W.2d 5, 7 (1975). A domicile is presumed to continue until the contrary is shown. *Id.* at 494, 232 N.W.2d at 7. Whether a departure from an established domicile and residence in another state changes a person's domicile is a question of fact that generally depends on the purpose and intent of the change. *Id.* (noting that if the change

in physical location is made without intent to abandon the old home, domicile has not changed); *Bechtel v. Bechtel*, 101 Minn. 511, 515, 112 N.W. 883, 885 (1907) (finding wife did not abandon Minnesota as her legal residence because she only moved to Massachusetts because husband threatened to cut off financial support if she refused). The purpose of the residency requirement is to prevent nonresidents from bringing grievances unrelated to Minnesota into Minnesota courts. *See Jones*, 402 N.W.2d at 148-49 (holding that wife, a Chinese citizen living in Minnesota to study for a year at the Mayo Clinic, was a resident under the statute, even though it was not clear whether she intended to return to China or remain permanently in the United States, because the court stated that forum shopping was not a concern). "[A] finding of proper domicile to confer jurisdiction for commencement of a divorce action will not be reversed unless it is palpably contrary to the evidence." *Davidner*, 304 Minn. at 493, 232 N.W.2d at 7.

Father contends that, as a matter of law, mother did not have a residence or domicile in Minnesota for the 180 days preceding the commencement of the dissolution. He reaches this conclusion by citing the following evidence from the record. Mother was with father in France from mid-April until June 2, 2011. Mother shipped some belongings to France, stated that she would hire a realtor to sell their home in Minnesota, and signed an apartment lease for an apartment in Paris. Mother also sent emails to father. For instance, in an email dated October 3, 2011, mother stated she would "come out [to France] to live as man and wife." But overall, the emails between mother and father permit the inference that mother was uncertain about making France her permanent home. In October 2010, before the relevant time period, mother stated: "I'm still trying

to get my head around having to leave my life and my family and friends . . . my home here," "I need to feel like I'm doing this at my own pace so it feels less like I'm forced to uproot my life and more like a choice," and "[I] know that I have to come live in Paris."

Father's recitation of facts is also incomplete. The record reflects the following facts. Mother looked for a realtor for the Minnesota home but never listed it for sale or rented it, and did not send all of the household goods to France. Mother has family in Minnesota, including her son from a prior marriage. She has a Minnesota driver's license, does her banking in Minnesota, and continued to receive mail here while she was in France. She does not speak French fluently, is not a French citizen and never attempted to become one, and traveled to France on a tourist visa. She testified that she was considering whether it would be possible to uproot her life and live in France. And she also sought to facilitate visitation between father and their children. Mother was financially dependent on father, and he promised to provide financial support only if she traveled to France. He also promised that if she went to France and considered living there, she could return to Minnesota freely with the children. Her emails to father support her statements that she went to France to consider relocating, but did not intend to make France her domicile. For example, on June 14, 2011, she told father that "I wanted to make our marriage work. After 6 weeks in Paris, I no longer believe that it is possible. I have decided to stay in Minnesota and proceed with a divorce." For mother's domicile to change from Minnesota to France, she must have had the intention to make France her permanent home.

Acting on the entirety of the record, the district court made findings that mother resided in Minnesota and had no intent to leave during the 180 days preceding the action. The district court's findings are entitled to deference and the evidence permits a finding that the district court had subject-matter jurisdiction over the dissolution. The district court's decision that mother is a Minnesota resident is not palpably contrary to the evidence in the record. *See Davidner*, 304 Minn. at 493, 232 N.W.2d at 7. Mother never had a present intent to move to France during the 180-day period. At most, mother testified that she went to France to try living there with father, which does not show that she intended to permanently remain there and make it her home. Thus, jurisdiction over the dissolution was proper in Minnesota and the district court did not err by denying father's motion to dismiss based on its determination that mother satisfied the 180-day residency requirement.

2.

Father argues the district court did not have child-custody jurisdiction. Minnesota has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Minn. Stat. §§ 518D.101–.317 (2012), which governs subject-matter jurisdiction over child-custody matters. Under the UCCJEA, whether a court has subject-matter jurisdiction depends on several factors, and the parties must satisfy one of four subparts to have jurisdiction in Minnesota:

> Except as otherwise provided in section 518D.204, a court of this state has jurisdiction to make an initial child custody determination only if:

> (1) this state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;
>
> (2) a court of another state does not have jurisdiction under clause (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 518D.207 or 518D.208, and:
>
> > (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and
> >
> > (ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;
>
> (3) all courts having jurisdiction under clause (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 518D.207 or 518D.208; or
>
> (4) no court of any other state would have jurisdiction under the criteria specified in clause (1), (2), or (3).

Minn. Stat. § 518D.201(a). Under the UCCJEA, a child's "home state" is the state where the child "lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding." Minn. Stat. § 518D.102(h). Temporary absences do not affect the home state period. *Id.* The home state analysis focuses on where a child "lived" and does not involve an inquiry into the child's or parent's intent. *See id.* The UCCJEA provides that Minnesota courts "shall treat a

foreign country as if it were a state of the United States for the purpose of applying sections 518D.101 to 518D.210." Minn. Stat. § 518D.105(a).

The district court's finding that Minnesota was the children's home state at the date of commencement of the proceedings is not clearly erroneous. Father argues that the children's home state is France, and they were visiting Minnesota. The record shows that the children lived in Minnesota from birth. From January 2011 until the beginning of June, the children were in France. Mother brought the children to France because she was considering relocating there. The record permits characterizing the children's time in France as visitation, and the period qualifies as a temporary absence from Minnesota. Although there also is evidence in the record that mother considered moving to France, mother's intent is not relevant to the children's home state since the analysis focuses on where the children lived, not where their parents intended to reside. *See* Minn. Stat. § 518D.102(h).

From June until October, when mother commenced the action, the children were in Minnesota. Mother retained the family's home in Minnesota, and the children still had a permanent residence to return to in Minnesota. They attended daycare in Minnesota, had doctors here, and usually visited France at least once per year. Even though the children currently reside in France because father will not return them to the U.S., their current residence is not relevant to the home state consideration. We discern no clear error in the district court's finding that Minnesota was the children's home state at the commencement of the proceedings and that their time in France was a temporary absence.

Father also asserts it was error for the Minnesota court to fail to communicate with the French trial court. Under Minn. Stat. § 518D.206(b), before a court of this state hears a child-custody proceeding, it must examine the information supplied by the parties. If the Minnesota court determines that a custody proceeding has been commenced in another state having jurisdiction in accordance with the UCCJEA, the Minnesota court must stay its proceeding and communicate with the court of the other state. At the time mother filed her dissolution petition in Minnesota in September 2011, no dissolution proceedings were then pending in the French court system. The record shows that father filed a dissolution petition sometime in December 2011, but because that petition is not in the record, the evidence does not show that this petition addressed child custody. More importantly, the record does not establish that the French court, which later ordered enforcement of the Minnesota court's March 2012 custody order, was a court with "jurisdiction substantially in accordance with [chapter 518D]." Minn. Stat. § 518D.206(b). Finally, the record does not show that the district court was furnished with any proof or argument in February 2012, when it conducted custody proceedings, regarding the jurisdiction of a French court or proceedings in that court. Appellant has not established that the Minnesota court erred in failing to communicate with the French court.

3.

Father argues the district court lacked jurisdiction to determine child support. The Uniform Interstate Family Support Act (UIFSA) has been adopted by all 50 states and addresses jurisdiction to enforce and modify child-support orders. *In re Welfare of*

S.R.S., 756 N.W.2d 123, 126 (Minn. App. 2008), *review denied* (Minn. Dec. 16, 2008). Minnesota has codified the UIFSA at Minn. Stat. §§ 518C.101-.901 (2012). The UIFSA has different provisions for jurisdiction depending on when a petition is filed in another state. If a petition is first filed in Minnesota, then a petition is filed in another state, the other state will have jurisdiction if:

> (1) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;
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> (2) the contesting party timely challenges the exercise of jurisdiction in this state; and
>
> (3) if relevant, the other state is the home state of the child.

Minn. Stat. § 518C.204(b).

Mother filed her petition for dissolution in Minnesota in September 2011 and served it in October 2011. Father filed a petition for dissolution in France in December 2011. His petition in France was filed before the expiration of the time allowed for challenging Minnesota jurisdiction. *See* Minn. R. Civ. P. 12.08(c). Thus, subsections (1) and (2) would favor jurisdiction in France if subsection (3) is met.

Jurisdiction is appropriate in France if France is the home state of the children. "Home state" means

> the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

Minn. Stat. § 518C.101(d). Because home state is defined using the same language in the UIFSA and the UCCJEA, the same analysis applies. Because Minnesota and not France is the children's home state for purposes of child custody, it is also their home state for determining child support. Accordingly, because France was not the home state of the children, the Minnesota district court had jurisdiction to determine child support.

4.

Father argues the district court abused its discretion by awarding mother sole legal and physical custody of the parties' minor children because the determination was not in the best interests of the children. The district court has broad discretion in making child-custody determinations. *Matson v. Matson*, 638 N.W.2d 462, 465 (Minn. App. 2002). Our review of custody determinations is limited to whether the district court abused its discretion by improperly applying the law. *Maxfield v. Maxfield*, 452 N.W.2d 219, 221 (Minn. 1990). A district court's findings of fact in a custody determination will be "sustained unless clearly erroneous." *LaChapelle v. Mitten*, 607 N.W.2d 151, 158 (Minn. App. 2000) (quotation omitted), *review denied* (Minn. May 16, 2000). We view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn. App. 2000). The district court's findings are not defective simply because the record might also support other findings. *Id.* at 474. The fundamental focus of custody determinations is the child's best interests. *Schisel v. Schisel*, 762 N.W.2d 265, 270 (Minn. App. 2009). There are 13 factors that a court must weigh when considering the

best interests of a child. Minn. Stat. § 518.17, subd. 1(a) (2012). The district court "may not use one factor to the exclusion of all others." *Id.* The district court's findings are sufficient if the findings as a whole reflect that the court has taken the relevant statutory factors into consideration. *See id.* Only in "unusual circumstances" will a remand be made for current information. *See Schumm v. Schumm*, 510 N.W.2d 13, 15 (Minn. App. 1993).

Mother requested sole custody of the children and father did not participate in the proceeding except to object to jurisdiction. The district court found that several statutory factors weighed in favor of awarding mother sole legal and physical custody: mother was the children's primary caretaker during the marriage, the children lived in a stable environment in Minnesota until December 2011 when they stayed in France with father, father has committed domestic abuse towards mother, father refuses to permit the children to return to Minnesota, and father failed to support the children's relationship with mother. Father does not challenge any of the district court's findings as clearly erroneous but argues, as an alternative argument to lack of jurisdiction, that the district court's conclusion regarding child custody is not supported by its findings because the district court noted that "[t]o uproot the children now after almost two (2) years appears to be against their best interests." But taken in context, the district court went on to explain that despite its concerns about uprooting the children from their current home in France, the totality of the circumstances and overall best interests of the children are for mother to have sole legal and physical custody. These findings are supported by evidence and particular findings in the record. Even if the fact that father has been caring

for the children since 2011 weighed in favor of awarding custody to father, the district court must balance numerous factors when considering the best interests of a child and cannot consider one factor to the exclusion of all others.

Father next argues that the district court's findings are inadequate because it had no information regarding the children's lives since December 2011, and he requests a remand to the district court for additional findings. Father elected not to participate in trial, and submitted no documentary information regarding the children despite interrogatories from mother requesting all information related to the children's school and medical care from December 2011 to present. He also refused to return the children to Minnesota by July 2012 as ordered by the district court, and had he returned the children, the court would have had more current information. It is not clear from this record that the lack of evidence from December 2011 through April 2013 left unanswered questions about the best interests of the children. Mother testified that she knew the children were at school and that their daughter, who has developmental disabilities, was receiving therapy. And email correspondence between mother and father indicated that father planned to have the children participate in team sports and music. The court found that it "believes the children have become established in their home and environment with [father] in France; they have friends and see [father's] family; and they have a routine in their father's care." After considering this information, it still found that the balance of all factors weighed in favor of awarding custody to mother.

Father also argues that awarding custody to mother is not in the children's best interests because there is no evidence that the children are not well cared for by him. But

the best-interests factors do not provide that one parent should receive custody so long as there is no evidence of harm to the children; the best-interests analysis takes a broader look at a number of factors in the children's lives. Accordingly, the district court did not abuse its discretion by awarding mother sole legal and physical custody of the children.

Affirmed.